IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11392 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHAMMED RAFIQ ABDUL REHMAN MEMON - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MM TIRMIZI for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1,2.
GOVERNMENT PLEADER for Respondent No(s).: 3.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 01/08/2005

ORAL JUDGMENT

1.By filing this petition, the petitioner detenu has challenged the detention order dated

5.05.2005 passed by the Police Commissioner, Ahmedabad City in exercise of the powers conferred upon him under sub-section (1) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (“the Act” for short), as, the “bootlegger” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to one criminal case which is filed under the Bombay Prohibition Act.

3. Learned advocate appearing on behalf of the petitioner detenu has submitted that the detaining authority has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or likely to affect the maintenance of public order and public health and merely because the petitioner is branded as “bootlegger” he cannot be preventively detained under the Act unless his activities as bootlegger affect adversely or is likely to affect the maintenance of public order and public health. It is submitted that solitary offence of prohibition being CR No.801 of 2005 has been registered with Prohibition Police Station, Western division on 3.5.2005 and the order of detention was passed on 5.5.2005 and

hence, there is unexplained delay of two days in passing the order of detention which is fatal, and, therefore, the impugned detention order is required to be quashed and set aside.

4. On the other hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent no.2.

5. Learned advocate appearing for the petitioner detenu has raised manifold contentions at the time of hearing. The first contention raised by the learned advocate appearing for the petitioner that only one incident is registered against the petitioner under the provisions of the Bombay Prohibition Act and on that basis the detention order has been passed. In support of his contention, he has relied upon the decision of this Court reported in 2004(1) GLR 864 and has submitted that one registered offence under the Bombay Prohibition Act obviously cannot disturb the peace of public tempo or place of public order, and, therefore, it cannot be considered to be prejudicial activities in any manner. It is required to be noted that if the solitary incident is really disturbing the public peace or tempo of the public and having prejudicial effect in the society, and on such occasion, if ordinary law is not helpful to curb such activities of any person, then certainly, the detaining authority is justified in passing

the detention order. In the present case, the alleged activities of the petitioner detenu cannot be said said to be disturbing the public peace or tempo of the public and having prejudicial effect in the society, and, therefore, impugned detention order is required to be quashed and set aside.

6. In view of what is stated above, the petition is allowed. The order of detention dated 5.5.2005 is quashed and set aside. The detenu Mohammed Rafiq Abdul Rehman Memon is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

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